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*Attorneys for Kenneth L. Evenstad Revocable Trust
u/a/d May 2, 2000; Kenneth L. Evenstad in his
capacity as Grantor and Trustee for the Kenneth L.
Evenstad Revocable Trust; Grace B. Evenstad in
her capacity as Trustee for the Kenneth L. Evenstad
Revocable Trust; Kenneth L. Evenstad,
individually; and Grace B. Evenstad, individually*

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Appellant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In Re:

BERNARD L MADOFF,

Debtor.

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Appellant,

v.

KENNETH L. EVENSTAD REVOCABLE TRUST
U/A/D MAY 2, 2000; KENNETH L. EVENSTAD in
his capacity as Grantor and Trustee for the Kenneth

Adv. Pro. No.08-01789 (SMB)

SIPA LIQUIDATION

(Substantially Consolidated)

ADV. PRO. NO. 10-04342 (SMB)

JURY TRIAL DEMANDED

L. Evenstad Revocable Trust; GRACE B.
EVENSTAD in her capacity as Trustee for the
Kenneth L. Evenstad Revocable Trust; KENNETH L.
EVENSTAD, individually; and GRACE B.
EVENSTAD, individually,

Defendants.

DEFENDANTS' ANSWER TO THE COMPLAINT

Defendants Kenneth L. Evenstad Revocable Trust u/a/d May 2, 2000 (the “Account Holder”); Kenneth L. Evenstad in his capacity as Grantor and Trustee for the Kenneth L. Evenstad Revocable Trust; Grace B. Evenstad in her capacity as Trustee for the Kenneth L. Evenstad Revocable Trust (collectively, with the Account Holder, the “Defendants”); Kenneth L. Evenstad, individually; and Grace B. Evenstad, individually (together, the “Subsequent Transferee Defendants” and, collectively with the Defendants, the “Defendant Parties”), as and for their answer to the complaint (the “Complaint”)¹ filed against them in this case by Plaintiff Irving H. Picard (“Plaintiff” or “Trustee”), as trustee for the liquidation of the business of Bernard Madoff Investment Securities LLC (“Madoff Securities”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. (“SIPA”),² and the substantively consolidated estate of Bernard L. Madoff individually (“Madoff”), state to the Court as follows:

NATURE OF PROCEEDINGS

1. The Defendant Parties state that the allegations of paragraph 1 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny that any of the Defendant Parties received any avoidable

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Complaint.

² For convenience, future reference to SIPA will not include “15 U.S.C.”

transfers from Madoff Securities and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1, and on that basis deny the allegations.

2. The Defendant Parties state that the allegations of paragraph 2 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and on that basis deny the allegations, except admit that the Account Holder received certain transfers from, and made certain transfers to, Madoff Securities during the six years prior to the Filing Date.³

3. The Defendant Parties state that the allegations of paragraph 3 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties admit that paragraph 3 purports to summarize the action commenced by the Complaint, but deny that the Trustee is entitled to any relief of any kind against any of the Defendant Parties and deny knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 3, and on that basis deny the allegations.

JURISDICTION AND VENUE

4. The Defendant Parties state that the allegations of paragraph 4 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge or information sufficient to form a belief as to

³ Paragraph 2 of the Complaint provides that “To the extent the funds transferred from BLMIS were for the benefit of the Subsequent Transferee Defendants, the Subsequent Transferee Defendants are the initial transferees of such transfers and are included in the definition of Defendants for purposes of the allegations herein.” The Defendant Parties deny that any payments were made “for the benefit” of the Subsequent Transferee Defendants and thus have based this answer on the definition of Defendants not including the Subsequent Transferee Defendants.

the truth of the allegations of paragraph 4, and on that basis deny the allegations, except admit that this adversary proceeding was commenced before the same Court before whom the main underlying SIPA proceeding is pending. The Defendant Parties further (i) deny that this Court has either jurisdiction over, or the constitutional authority to enter a final judgment in, this adversary proceeding, (ii) expressly do not consent to this Court's jurisdiction over non-core matters, (iii) expressly do not consent to the entry of final orders or judgments by the bankruptcy judge if it is determined that the bankruptcy judge cannot enter final orders or judgments consistent with Article III of the U.S. Constitution, (iv) demand a trial by jury before the District Court for the Southern District of New York (the "District Court"), (v) do not consent to a jury trial being held before this Court and (vi) reserve the right to seek further withdrawal of the reference of some or all of this matter to the District Court.

5. The Defendant Parties state that the allegations of paragraph 5 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations contained in paragraph 5 and (i) expressly do not consent to this Court's jurisdiction over non-core matters, (ii) expressly do not consent to the entry of final orders or judgments by the bankruptcy judge if it is determined that the bankruptcy judge cannot enter final orders or judgments consistent with Article III of the U.S. Constitution, (iii) demand a trial by jury before the District Court, (iv) do not consent to a jury trial being held before this Court and (v) reserve the right to seek further withdrawal of the reference of this matter to the District Court.

6. The Defendant Parties state that the allegations of paragraph 6 are legal conclusions or arguments as to which no response is required. To the extent a response is

required, the Defendant Parties deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and on that basis deny the allegations.

DEFENDANTS

7. The Defendant Parties admit the allegations in paragraph 7.

8. The Defendant Parties deny that Kenneth L. Evenstad maintains his residence in Wayzata, Minnesota, but admit the remaining allegations in paragraph 8 and admit that Kenneth L. Evenstad maintains his residence in Naples, Florida.

9. The Defendant Parties deny that Grace B. Evenstad maintains her residence in Wayzata, Minnesota, but admit the remaining allegations in paragraph 9 and admit that Grace B. Evenstad maintains her residence in Naples, Florida.

10. The Defendant Parties admit the allegations in paragraph 10.

11. The Defendant Parties admit the allegations in paragraph 11.

BACKGROUND, THE TRUSTEE AND STANDING

12. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 12, and on that basis deny the allegations.

13. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 13, and on that basis deny the allegations.

14. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 14, and on that basis deny the allegations.

15. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 15, and on that basis deny the allegations.

16. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 16, and on that basis deny the allegations.

required, the Defendant Parties deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22, and on that basis deny the allegations.

THE FRAUDULENT PONZI SCHEME

23. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 23, and on that basis deny the allegations, except admit, on information and belief, that Madoff Securities was a securities broker-dealer registered with the SEC and SIPC.

24. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 24, and on that basis deny the allegations.

25. The Defendant parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 25, and on that basis deny the allegations.

26. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 26, and on that basis deny the allegations, except admit that the Account Holder typically received monthly statements and trading confirmations from Madoff Securities showing the securities that were held in, or had been traded through, the Account.

27. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 27, and on that basis deny the allegations.

28. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 28, and on that basis deny the allegations.

29. The Defendant Parties deny that any monies sent to Madoff Securities were used to enrich any of the Defendant Parties and that any of the Defendant Parties had any knowledge of the Madoff Securities Ponzi scheme, to the extent such scheme existed (which the Defendant Parties do not at this time concede). The Defendant Parties deny knowledge and information

required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 37, and on that basis deny the allegations.

THE TRANSFERS

38. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 38, and on that basis deny the allegations, except admit that account number #1E0139 (the “Account”) was maintained with Madoff Securities and deny knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 38, and on that basis deny the allegations.

39. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 39, and on that basis deny the allegations, except admit that certain funds were transmitted to Madoff Securities by wire, check and/or inter-account transfer for application to the Account and the purported conducting of trading activities.

40. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 40, and on that basis deny the allegations, except admit that the Account Holder received certain transfers from, and made certain transfers to, Madoff Securities during the six years prior to the Filing Date.

41. The Defendant Parties state that the allegations of paragraph 41 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 41, except admit that the Account Holder received certain transfers from, and made certain transfers to, Madoff Securities during the six years prior to the Filing Date and the two year period prior to the Filing Date.

42. The Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 42, and on that basis deny the allegations, except

required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 48, and on that basis deny the allegations.

49. The Defendant Parties state that the allegations of paragraph 49 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 49, and on that basis deny the allegations.

50. The Defendant Parties state that the allegations of paragraph 50 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 50.

51. The Defendant Parties state that the allegations of paragraph 51 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 51.

COUNT TWO
FRAUDULENT TRANSFER – 11 U.S.C. §§ 548(a)(1)(B), 550(a) AND 551⁴

52. The Defendant Parties repeat, allege, and incorporate by reference their response to paragraphs 1 through 51 as if fully set forth herein.

53. The Defendant Parties state that the allegations of paragraph 53 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 53, and on that basis deny the allegations.

⁴ This cause of action has been dismissed against the Defendant Parties in accordance with the Consent Order Granting Certification Pursuant to Fed. R. Civ. P. 54(b) for Entry of Final Judgment Dismissing Certain Claims and Actions. *See Securities Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff Secs.)*, No. 12-MC-0115 (JSR) (S.D.N.Y. April 27, 2012) (Docket No. 101).

54. The Defendant Parties state that the allegations of paragraph 54 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 54, and on that basis deny the allegations.

55. The Defendant Parties state that the allegations of paragraph 55 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 55.

56. The Defendant Parties state that the allegations of paragraph 56 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 56, and on that basis deny the allegations.

57. The Defendant Parties state that the allegations of paragraph 57 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 57, and on that basis deny the allegations.

58. The Defendant Parties state that the allegations of paragraph 58 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 58, and on that basis deny the allegations.

59. The Defendant Parties state that the allegations of paragraph 59 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 59.

65. The Defendant Parties state that the allegations of paragraph 65 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 65.

COUNT FOUR
FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW §§ 273, 278 AND/OR 279, AND 11 U.S.C. §§ 544(b), 550(a) AND 551⁶

66. The Defendant Parties repeat, allege, and incorporate by reference their response to paragraphs 1 through 65 as if fully set forth herein.

67. The Defendant Parties state that the allegations of paragraph 67 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 67, and on that basis deny the allegations.

68. The Defendant Parties state that the allegations of paragraph 68 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 68, and on that basis deny the allegations.

69. The Defendant Parties state that the allegations of paragraph 69 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 69.

70. The Defendant Parties state that the allegations of paragraph 70 are legal conclusions or arguments as to which no response is required. To the extent a response is

⁶ This cause of action has been dismissed against the Defendant Parties in accordance with the Consent Order Granting Certification Pursuant to Fed. R. Civ. P. 54(b) for Entry of Final Judgment Dismissing Certain Claims and Actions. *See Securities Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff Secs.)*, No. 12-MC-0115 (JSR) (S.D.N.Y. April 27, 2012) (Docket No. 101).

required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 70, and on that basis deny the allegations.

71. The Defendant Parties state that the allegations of paragraph 71 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny paragraph 71.

COUNT FIVE
FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW §§ 274, 278 AND/OR 279, AND 11 U.S.C. §§ 544(b), 550(a) AND 551⁷

72. The Defendant Parties repeat, allege, and incorporate by reference their response to paragraphs 1 through 71 as if fully set forth herein.

73. The Defendant Parties state that the allegations of paragraph 73 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 73, and on that basis deny the allegations.

74. The Defendant Parties state that the allegations of paragraph 74 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 74, and on that basis deny the allegations.

75. The Defendant Parties state that the allegations of paragraph 75 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 75.

⁷ This cause of action has been dismissed against the Defendant Parties in accordance with the Consent Order Granting Certification Pursuant to Fed. R. Civ. P. 54(b) for Entry of Final Judgment Dismissing Certain Claims and Actions. *See Securities Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff Secs.)*, No. 12-MC-0115 (JSR) (S.D.N.Y. April 27, 2012) (Docket No. 101).

76. The Defendant Parties state that the allegations of paragraph 76 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 76, and on that basis deny the allegations.

77. The Defendant Parties state that the allegations of paragraph 77 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 77.

COUNT SIX
FRAUDULENT TRANSFER – NEW YORK DEBTOR AND CREDITOR LAW §§ 275, 278 AND/OR 279, AND 11 U.S.C. §§ 544(b), 550(a) AND 551⁸

78. The Defendant Parties repeat, allege, and incorporate by reference their response to paragraphs 1 through 77 as if fully set forth herein.

79. The Defendant Parties state that the allegations of paragraph 79 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 79, and on that basis deny the allegations.

80. The Defendant Parties state that the allegations of paragraph 80 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 80, and on that basis deny the allegations.

⁸ This cause of action has been dismissed against the Defendant Parties in accordance with the Consent Order Granting Certification Pursuant to Fed. R. Civ. P. 54(b) for Entry of Final Judgment Dismissing Certain Claims and Actions. *See Securities Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff Secs.)*, No. 12-MC-0115 (JSR) (S.D.N.Y. April 27, 2012) (Docket No. 101).

required, the Defendant Parties deny knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 87, and on that basis deny the allegations.

88. The Defendant Parties state that the allegations of paragraph 88 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 88.

89. The Defendant Parties state that the allegations of paragraph 89 are legal conclusions or arguments as to which no response is required. To the extent a response is required, the Defendant Parties deny the allegations of paragraph 89.

RESPONSE TO PRAYER FOR RELIEF

90. The Defendant Parties assert that the items contained in the prayer for relief constitute legal conclusions or arguments as to which no response is required. To the extent any response is required, the Defendant Parties deny, *inter alia*, (i) that judgment should be entered in favor of the Trustee against any of the Defendant Parties on any grounds, (ii) that the Trustee is entitled to prejudgment interest from the date on which the Transfers were purportedly received (or at all), (iii) that a constructive trust should be established over the proceeds of the purported Transfers in favor of the Trustee for the benefit of the Madoff Securities estate, (iv) that the Defendants' (or any of the Defendant Parties') income tax refunds from the United States, state and local governments paid on so-called "fictitious profits" during the course of the purported scheme should be assigned to the Trustee or any other party, (v) that the Trustee is entitled to any interest, costs or expenses in connection with this action and (vi) that the Trustee is entitled to any other relief against any of the Defendant Parties.

DEFENSES

The Defendant Parties assert the following affirmative defenses and reserve the right to amend this Answer to assert other and further defenses when and if, in the course of its investigation, discovery, or preparation for trial it becomes appropriate. By designating these matters as “defenses,” the Defendant Parties do not relieve the Trustee of proving under the appropriate standard of proof all elements of any claim alleged. The Defendant Parties do not undertake any burdens that properly rest upon the Trustee, and do not suggest either that the Trustee does not bear the burden of proof as to such matters or that such matters are not elements that he must establish in order to make out a *prima facie* case against the Defendant Parties.

Under prior decisions applicable to this adversary proceeding, all of the claims alleged in the Complaint are barred but for those claims asserted under sections 548(a)(1)(A) and 550(a)(2) of the Bankruptcy Code. *See* Consent Order Granting Certification Pursuant to Fed. R. Civ. P. 54(b) for Entry of Final Judgment Dismissing Certain Claims and Actions. *See Securities Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff Secs.)*, No. 12-MC-0115 (JSR) (S.D.N.Y. April 27, 2012) (Docket No. 101). In the event that subsequent legal developments further alter the claims available to the Trustee, the Defendant Parties hereby raise each and every defense at law, in equity, or otherwise, available under any and all federal and state statutes, laws, rules, regulations or other creations, including common law.

The Defendant Parties reserve and assert all affirmative defenses available under applicable federal or state law, including Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, New York Debtor and Creditor Law, New York Civil Practice and Local Rules, and reserve the right to assert other defenses, cross-claims, and third party claims when and if they become appropriate in this action.

SIXTH DEFENSE

96. The claims set forth in the Complaint are not ripe, and the Trustee lacks standing, because the claims do not meet the conditions of section 78fff-2(c)(3) of SIPA. The Trustee has not established that there is a shortfall in customer property.

SEVENTH DEFENSE

97. The transfers are not avoidable and/or recoverable because the funds at issue were held in trust, or as bailee for the Defendant Parties, by Madoff Securities and were not property of the estate in which Madoff Securities had a legal interest.

EIGHTH DEFENSE

98. To the extent the allegations in the Complaint concerning the alleged Ponzi scheme perpetrated by Madoff Securities are true,⁹ then Madoff Securities acquired by fraud all of the funds that were the subject of the purported Transfers. Because Madoff Securities acquired such funds by fraud, Madoff Securities never acquired legal or beneficial ownership of the funds, such that the purported Transfers were not comprised of, and did not involve, any property of Madoff Securities.

NINTH DEFENSE

99. The Complaint fails to state a claim on which relief can be granted because it fails to properly plead the elements required for the avoidance of Madoff Securities' obligations. Absent an action to avoid Madoff Securities' obligations to pay what is owed to the customer under state law, the transfers were all made on account of antecedent debts. To the extent the Trustee has pled the avoidance of obligations, he is not authorized under governing statutes to pursue such avoidance claims.

⁹ The Defendant Parties lack knowledge or information sufficient to form a belief with respect to the truth of those allegations, and thus deny those allegations.

made by or to a stockbroker and/or financial institution, in connection with a securities contract and/or (ii) constituted a settlement payment made by or to a stockbroker and/or financial institution.

TWENTY-FIRST DEFENSE

111. Each claim for recovery of a fraudulent transfer is barred in whole or in part (whether by virtue of the “value” defense, setoff or equitable adjustment) because, to the extent any alleged transfers were actually received by any Defendant Party, the Defendant Party received such transfer in good faith, without knowledge of the alleged fraud, and in payment of an antecedent debt, in whole or in part, on account of obligations owed by Madoff Securities for, *inter alia*, (i) amounts contractually due to customers under New York law for the balances shown on prior customer account statements and related documents; (ii) rescission remedies, including damages and interest for fraud and misrepresentation pursuant to federal and state law; (iii) the time value of money; (iv) unjust enrichment; (v) damages for breach of fiduciary duty; and/or (vi) money had and received.

TWENTY-SECOND DEFENSE

112. Each of the counts alleging a fraudulent transfer is subject to defense, setoff or equitable or other adjustment to the extent that such transfers were, in whole or in part, used to pay tax obligations imposed on so-called “fictitious profits” reported on, among other things, IRS Form 1099 and other information reported by Madoff Securities to the Internal Revenue Service, state and/or local governmental taxing authorities.

TWENTY-THIRD DEFENSE

113. Each of the counts alleging a fraudulent transfer is subject to defense, setoff or equitable or other adjustment to the extent that such transfers were, in whole or in part, used by

the Defendant Parties to satisfy funding or other commitments to organizations that meet the requirements for tax-exempt status.

TWENTY-FOURTH DEFENSE

114. The claims are barred in whole or part because they depend upon calculations that improperly attempt to avoid transfers that occurred prior to the applicable two-year or six-year “reach-back” limitations period.

TWENTY-FIFTH DEFENSE

115. The claims are barred in whole or part for failure of the Trustee to credit amounts deposited or invested by any Defendant Party with Madoff Securities during the applicable two-year or six-year “reach-back” limitations period.

TWENTY-SIXTH DEFENSE

116. The claims are barred in whole or part for failure of the Trustee to credit amounts deposited or invested directly or indirectly by any Defendant Party with Madoff Securities through a feeder fund or other, similar investment vehicle.

TWENTY-SEVENTH DEFENSE

117. The claims are barred in whole or part for failure to properly credit inter-account transfers.

TWENTY-EIGHTH DEFENSE

118. The Claims are barred in whole or in part to the extent they relate to transfers, if any, made prior to the ownership of the Account by the Account Holder.

TWENTY-NINTH DEFENSE

119. The Claims are barred in whole or in part to the extent they relate to transfers made to a predecessor owner of the Account, if any.

FORTY-FIRST DEFENSE

131. The Defendant Parties adopt and incorporate by reference any and all other defenses asserted or to be asserted by any other defendant or party-in-interest to the extent that such defenses may be applicable to any of the Defendant Parties.

FORTY-SECOND DEFENSE

132. The Trustee's claims are barred, in whole and/or in part, because Madoff Securities was not, upon information and belief, insolvent at the time of the transfers allegedly received by the Defendant Parties, and Madoff Securities was not, upon information and belief, rendered insolvent, or without sufficient capital, as a result of such alleged transfers.

FORTY-THIRD DEFENSE

133. The Trustee's claims are barred, in whole and/or in part, because the enforcement of relief alleged against the Defendant Parties, victims of the Madoff fraud, would be unconscionable and a violation of public policy.

FORTY-FOURTH DEFENSE

134. The Trustee's claims against the Defendant Parties fail to the extent they seek to impose joint and several liability on the Defendant Parties because there is no basis for such relief.

FORTY-FIFTH DEFENSE

135. The Trustee's claims are barred in whole or in part against each Defendant Party to the extent any Defendant Party did not receive, or acted as a conduit in respect of, the transfers underlying such claim, and the Complaint insufficiently pleads receipt of the transfers by the Defendant Parties.

FORTY-SIXTH DEFENSE

136. The Trustee's claims against the Defendant Parties are barred because the Trustee suffered no damages proximately caused by the Defendant Parties.

RESERVATION OF RIGHTS

137. The Defendant Parties hereby give notice that they intend to rely upon any other defenses that may become available or appear during the pre-trial proceedings based upon evidence obtained through discovery or otherwise and hereby reserve the right to amend their answer and assert any such defenses.

COUNTERCLAIMS AND CROSS-CLAIMS

138. The Defendant Parties expressly reserve all rights with respect to all counterclaims or cross claims that may be revealed during the course of discovery.

JURY DEMAND

139. The Defendant Parties demand trial by jury of all the issues in this proceeding that are so triable and do not consent to trial by jury in the Bankruptcy Court.

